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RUCPDOG/DEPT OF COMMERCE WASHDC  
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RUEAWJA/DEPT OF JUSTICE WASHINGTON DC  
RHMCSUU/FBI WASHINGTON DC  
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SIPDIS

State for EAP/CM - SFlatt; EEB - JUrban  
State for INL - JVigil  
USTR for China Office - AWinter; IPR Office - RBae; and OCG -  
SMcCoy  
Commerce for National Coordinator for IPR Enforcement  
Commerce for CIsrael  
Commerce for MAC 3204/ESzymanski  
Commerce for MAC 3043/McQueen  
Commerce for MAC 3042/SWilson, JYoung  
Commerce for NWinetke  
LOC/Copyright Office - MPoor  
USPTO for Int'l Affairs - LBoland, EWu  
DOJ for CCIPS - MDubose  
DOJ for SChembtob  
FTC for Blumenthal  
FBI for LBryant  
DHS/ICE for IPR Center - DFaulconer, TRandazzo  
DHS/CBP for IPR Rights Branch - GMcCray, PPizzeck  
ITC for LLevine, LSchlitt

E.O. 12958: N/A

TAGS: [ETRD](#) [KIPR](#) [ECON](#) [PGOV](#) [CH](#)

SUBJECT: South China IPR: Visiting US Federal Judge and Prosecutor  
Help Open Doors

REF: A) GUANGZHOU 438, B) 2007 GUANGZHOU 1241

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11. (U) Summary: Conventional wisdom says that judges can talk with judges, police can talk with police. During a PTO-sponsored two-day program in south China, a Senior U.S. District Judge and a Department of Justice (DOJ) Prosecutor talked with both, and students too, sharing ideas on how to protect intellectual property rights and building on previous exchanges. Appellate courts for Guangdong Province and Shenzhen City and the U.S. visitors discussed common challenges as well as specific concerns of U.S. rights holders, such as the valuation of infringing goods. The visiting U.S. officials were impressed by the strong understanding of U.S. copyright law and recent cases of students majoring in IPR at the South China University of Technology. In addition, the Director of the Shenzhen Economic Crimes Investigation Division (ECID) called for increased bilateral law enforcement cooperation, especially in cases of Chinese economic crimes where defendants flee to other countries like the U.S. and Canada. End summary.

Guangdong High Court Welcomes Visit  
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12. (U) Senior U.S. District Judge Ronald Lew and DOJ Prosecutor Matthew Bassiur held productive exchanges during their two-day program sponsored by the Guangzhou branch of the U.S. Patent and Trademark Office (PTO). (Note: Mr. Bassiur serves in a specialized

IPR prosecution unit of the Department of Justice, the Computer Crime and Intellectual Property Section or "CCIPS." End note.) The visit to the Guangdong High Court built on the July visit by other U.S. jurists (ref A). Participants on both sides learned that Judge Lew's Central California Federal District faces similar challenges to those faced by the Guangdong High Court, as each handles their respective country's largest IPR caseloads. Guangdong High Court Chief IPR Judge Lin Guanghai said that the 4,000 IP cases filed each year in Guangdong represent 20 percent of the total IP cases filed annually in all of China.

#### Students Show Understanding of U.S. IPR Law

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13. (U) In a presentation to students majoring in Intellectual Property Rights at South China University of Technology's (SCUT) School of Law, DOJ Prosecutor Bassiur emphasized the value of having prosecutors play an integral part at every stage of a police investigation, as is the practice in the United States. China's system currently gives police almost sole discretion for investigating a case and gathering evidence before transferring everything to prosecutors, who make a final decision about whether to take it to court. U.S. rights holders frequently complain that the current law enforcement/prosecutor divide means that completed investigations often are not tried because prosecutors have no personal stake in a case when it is submitted to them for trial. In addition, rights holders say they cannot communicate with prosecutors to learn why specific cases are not tried, leaving them with no recourse when trying to seek legal remedies for infringement of their intellectual property.

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14. (U) Note: Judge Lew commented afterwards that he was impressed with the students' familiarity and understanding of applicable U.S. law and recent decisions. Thirty graduate and undergraduate students participated in the joint seminar program. SCUT Party Secretary, Professor Sun Guozhong, as well as several prominent IP professors also participated in the event, and joined in the question-and-answer session. The school currently enrolls 100 students in its IPR program, with approximately 80 undergraduate students and 20 students in graduate and post-graduate programs. End Note.

#### Shenzhen Courts Discuss Valuation of Infringing Goods

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15. (U) In a broad discussion of the differences between the handling of U.S. and Chinese IPR cases with Judge Huang Guoxin, President of Shenzhen Intermediate People's Court and some of his colleagues, the officials explored key differences in the valuation of counterfeit and infringing goods in Chinese IPR cases. The Shenzhen judges described a system that initially sounded very similar to U.S. procedures. However, further discussion revealed what many U.S. rights holders have found most troubling: China's courts and enforcement agencies enjoy wide latitude when deciding how to value the infringing goods. The Shenzhen judges said that proof of illegal sales volume and illegal income are the most important basis for valuations in Shenzhen. U.S. rights holders find this troublesome because the Chinese courts' lack of a formal evidence discovery process means that U.S. firms often fail to find sufficient evidence of illegal income to meet civil and criminal thresholds in many IPR cases (ref B).

16. Note: (U) The specialized IPR tribunal of the Shenzhen Intermediate People's Court was established in 1994. It represents one of China's earliest moves towards specialized IPR courts. The Shenzhen court system currently employs 756 staff -- including 7 "grassroots" courts reporting to the Intermediate Court. The entire caseload totals 140,000 per year, of which 27,000 cases are handled by the Intermediate Court. The Intermediate Court's IPR Tribunal is composed of 10 judges and 11 clerks who are divided among specifically designated civil and criminal courts. Judge Ye Ruosi, Chief Judge of the IPR Court, said 1,005 IP cases were heard in 2007, which is above the average of 800 to 900 cases in recent years. Patent cases accounted for the largest share. End Note.

## Shenzhen ECID Wants Increased International Cooperation

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17. (U) Li Hong, Deputy Director General of the Shenzhen Public Security Bureau, said the Shenzhen government is working hard to improve IPR protection. Li described several cases from the last few years in which his division cracked major counterfeiting operations that involved international rights holders like Microsoft, IBM, Louis Vuitton and Cisco. Li said Shenzhen leaders and law enforcement personnel are convinced that without effective IP protection, foreign investors will leave, which would be detrimental to the city's efforts to establish an identity as "Shenzhen, capital of investment." ECID has implemented several community outreach and education programs in order to help reduce demand for infringing products, while continuing to investigate and prosecute individual cases. Li also expressed hope for increased bilateral law enforcement cooperation, especially in cases where

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fugitives have fled to the United States, Canada and other countries. Li said Shenzhen ECID has 42 cases in which criminals have fled to other countries and the Chinese public does not understand why local authorities cannot bring these criminals to justice.

18. (U) Li has been head of Shenzhen ECID for almost four years, after previously serving as a prosecutor for 14 years. Shenzhen ECID was formed in 2002 and currently employs 300 officers, with 182 at headquarters and 120 officers spread among the city's six districts. In addition to investigating IPR-related cases, the division also handles tax crime, corporate crime, money laundering and financial crimes.

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